

S T A T E R E P O R T E R
O F
E D U C A T I O N L A W
VOLUME 7

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

G. NICK HOLMES,

Appellant/Respondent,

v.

No. OSPI 118-86

Decided: Dec, 29, 1988

WHITEHALL SCHOOL DISTRICT,

Respondent/Petitioner.

Appeal from the Lewis and Clark County Superintendent of Schools.

Findings of Fact, Conclusions of Law and Order by Ed Argenbright,
State Superintendent.

TENURE--ADMINISTRATION, Appeal from order reinstating dismissed,
tenured senior high school principal and ordering back salary and
benefits be paid.

•

This is an appeal from an order of the Lewis and Clark County Superintendent of Schools, H. Kay McKenna, sitting for the Jefferson County Superintendent of Schools, issued on May 13, 1988. That decision was the second decision made on this matter by the Lewis and Clark County Superintendent. Earlier, she had determined that she lacked jurisdiction to hear the appeal based on timeliness grounds. The County Superintendent's jurisdictional decision was appealed to the State Superintendent on May 5, 1987. The matter was remanded back to the County Superintendent for hearing on the merits pursuant to the State Superintendent's Memorandum Opinion of that date.

Following remand, the hearing was held on July 30, 1987, before the Lewis and Clark County Superintendent of Schools sitting for the Jefferson County Superintendent of Schools. The County Superintendent overruled the March 24, 1986 decision of the Whitehall School Board to terminate Mr. Holmes, who was a tenured senior high school principal with the Whitehall School District, having served in that capacity for seven years at the time of his termination.

The decision which is the subject of this appeal also ordered that the principal, Mr. Holmes, be reinstated as a tenured teacher and receive all salary and benefits lost by him.

Pursuant to notice, briefs have been submitted and oral argument has been held. Based on the briefs, record and exhibits in this matter, the State Superintendent now enters these:

FINDINGS OF FACT

1. There is substantial credible evidence in the record to support the Lewis and Clark County Superintendent's Findings of Fact 1-6, 8 and the first sentence of Finding of Fact 10. These findings are herein adopted by this State Superintendent and are fully set forth below.

2. Petitioner, G. Nick Holmes, was employed by the Respondent School District as a high school principal. At the time of his termination, he held administrative endorsements and had been employed by the Respondent School District for 7 consecutive years. He was experienced as a teacher with over 14 years of classroom experience.

3. The Respondent School District is a political subdivision of the state of Montana, created and existing under the laws of the state of Montana, and operating elementary and high schools in Whitehall, Montana.

4. On March 5, 1986, the Whitehall School Board voted to eliminate the position of high school principal for the 1986-1987 school year due to the economic conditions of the District and declining enrollment.

5. On March 10, 1986, the Superintendent of the Whitehall School District recommended that Petitioner's contract be terminated due to a reduction in force.

Holmes, Appellant/Respondent, v.
Whitehall Sch. Dist., Respondent/Petitioner
7 Ed Law 212

6. The Chairman of the Board informed Petitioner on March 10, 1986, of his termination as principal. Notice was duly receipted by the Petitioner.

7. A hearing was held at the March 24 meeting, at which time the School Board passed two motions. The first motion was:

"We accept the superintendent's recommendation that Mr. Holmes' contract be terminated at the end of the 1985-86 contract due to the elimination of the high school principal position which was eliminated based on declining enrollment and administrative reorganization."

The second motion was:

". . . If Mr. Holmes is able to provide evidence by April 11, 1986, of endorsements in positions where the District currently has non-tenured teachers, that Mr. Holmes be allowed to 'bump' into the position, pursuant to the Sorlie Case (Sorlie V. School District No. 2, 205 Mont. 22, 667 P.2d 400 [1983] [2 Ed Law 145]) and continue his status as a tenured teacher. (Citation supplied)."

8. At the April 2, 1986 meeting of the Board of Trustees, the following motion was passed:

". . . That we rescind the motion that we, that was carried, on March 24, that stated that if Mr. Holmes was able to provide evidence by April 11, 1986, of endorsements in positions where the District currently has non-tenured teachers, that Mr. Holmes will be allowed to 'bump' into that position pursuant to the Sorlie case and continue his status as a tenured teacher."

9. At the time of termination, Petitioner possessed all necessary qualifications for certification as a teacher. Based on the foregoing Findings of Fact, this State Superintendent herein adopts appellant's Proposed Conclusions of Law 1-12, fully set forth below, and draws these:

CONCLUSIONS OF LAW

1. This is a contested case before the State Superintendent of Public Instruction. Jurisdiction is in the State Superintendent of Public Instruction pursuant to sections 20-3-107, 20-3-210, and 20-4-205, MCA.

2. The Whitehall School board acted reasonably and within their statutory and constitutional authority in eliminating the high school principal position from the Whitehall School District and in subsequently terminating Holmes' contract because of the economic conditions and declining enrollment experienced by the School District.

3. Supervision and control of schools in each school district is vested in a board of trustees to be elected as provided by law. The board of trustees is granted constitutional authority. See Article X, Section 8, 1972 Montana Constitution.

4. The Whitehall Board of Trustees properly identified the need for a reduction in force and elimination of the high school principal position. As a result, the trustees properly terminated Holmes' teaching contract by the first March 24, 1986 motion.

5. The procedure followed by the Whitehall School Board in terminating Holmes complied with the provisions of Section 20-4-204, MCA. Holmes subsequently proceeded with his appellate right as demonstrated by his request for a hearing before the Whitehall Board of Trustees and his subsequent hearing before the Lewis and Clark County Superintendent of Schools.

6. Boards of trustees have a right to transfer, assign and eliminate positions pursuant to their management rights found in Sections 39-31-303 and 20-3-324, MCA. See Sorlie, supra. See also Article X, Section 8, 1972 Montana Constitution.

7. Holmes did not hold any teaching endorsements at the time of his termination and **was** therefore not entitled to take advantage of the Massey doctrine which allows tenured teachers who hold endorsements in areas taught by non-tenured teachers to "bump" those non-tenured teachers. See Massey v. Argenbright, Mont._____, 683 P.2d 1332, 3 Ed. Law 142, 41 St. Rep. 1393 (1984) .

8. The second motion passed at the March 24, 1986 Whitehall School Board meeting which offered Holmes the opportunity to provide evidence of proper endorsements by April 11, 1986 was a gratuitous offer by the School District for which they were under no obligation to make.

9. The Whitehall Board of Trustees properly rescinded the second March 24, 1986 motion at their April 2, 1986 meeting. No vested rights had accrued to Holmes at that time, and the Whitehall Board of Trustees were under no legal obligation to Holmes. Once Holmes was terminated under provisions of Section 20-4-204, MCA, in the first March 24, 1986 motion, his employment rights and tenure rights were terminated. See Beck v. Bd. of Trustees, _____Mont._____, 45 St. Rep. 1520 (1988).

10. After the first March 24, 1986 motion was adopted, the Whitehall School District did not owe Holmes the protections afforded a tenured teacher. The second March 24, 1986 motion was an offer to allow Holmes to bump non-tenured teachers contingent upon his providing the School Board with evidence of endorsements by April 11, 1986.

11. The Whitehall Board of Trustees rescinded their contingent offer on April 2, 1986 before Holmes had fulfilled the contingency. The evidence further indicates that Holmes did not supply the Board with evidence of his endorsements by April 11, 1986.

12. That this State Superintendent has considered all issues raised by the parties in this matter and has considered all proposed Findings of Fact and Conclusions of Law and those not specifically

Holmes, Appellant/Respondent, v.
Whitehall Sch. Dist., Respondent/Petitioner
7 Ed Law 212

incorporated herein are specifically denied.

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent now issues this:

ORDER

1. That the May 13, 1988 decision of the Lewis and Clark County Superintendent of Schools is reversed.

2. That the March 24, 1986 decision of the Whitehall School Board to terminate Respondent Holmes' position as high school principal because of economic conditions and declining enrollment is reinstated.

3. That Petitioner Whitehall School District's request for the award of attorney fees against the Lewis and Clark County Superintendent of Schools is without merit or legal authority and is denied.

IT IS SO ORDERED.

Dated this 29th day of December, 1988.

s/Ed Argenbright
State Superintendent